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TO ALL MILK PRODUCERS FOR THE AKRON, OHIO, MARKETING AREA:

Set forth below is an order, which if approved by producers and issued by the Secretary of Agriculture will regulate the handling of milk produced for sale in the Akron, Ohio, marketing area. According to my records you are eligible to vote to determine whether the order should be made effective. Your careful reading of the order and the explanatory statement which precedes it is invited so that you will be acquainted with its terms at the time you cast your ballot.

The proposed order would affect milk distributed in all of Summit County, including the City of Akron, and in the four townships of Franklin, Ravenna, Brimfield, and Suffield in Portage County, with the exception of small portions of Greene and Suffield Townships which are included within the areas regulated by the Stark County Federal milk order.

The order would require that all milk distributors serving the marketing area pay specified minimum prices for milk. Each distributor would be required to pay the same minimum price for the milk used in each class. These sales proceeds would then be "pooled" and all producers in the market would be paid the same minimum price for milk of the basic 3.5 percent butterfat test, regardless of which distributor received the milk. Producers delivering milk above or below 3.5 percent butterfat content would, of course be paid a correspondingly higher or lower price.

Under the order, milk sold to distributors would be divided into two classes. In general Class I would include milk and cream sold for fluid use, while Class II is the milk used to make manufactured dairy products. For the first two years of operation of the proposed order, Class I prices would be the same as those provided for in the Stark County order and 5 cents per hundredweight less than the Class I price established in the Cleveland order. The 5 cent discount is equivalent to the 45 cent discount on fluid cream in Cleveland. The price for Class II milk would be equal to the higher of a price paid for ungraded milk at midwestern condenseries or a formula computed from the market prices of butter and non-fat dry milk solids.

Two-thirds of the producers voting must approve the order before it can be made effective. A notice of the time and place of voting is enclosed - read the notice carefully and follow the directions contained therein in casting your ballot.



A. T. Radigan, Referendum Agent
U. S. Department of Agriculture

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 960]

[Docket No. AO-253]

HANDLING OF MILK IN AKRON, OHIO,
MARKETING AREA

DECISION WITH RESPECT TO PROPOSED
MARKETING AGREEMENT AND PROPOSED
ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Akron, Ohio, on March 1-6, inclusive, 1954, pursuant to notice thereof which was issued on February 10, 1954 (19 F. R. 859).

Upon the basis of the evidence introduced at the hearing and the record thereof the Deputy Administrator, Agricultural Marketing Service, on August 16, 1954, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision. This decision and notice of opportunity to file written exceptions thereto was published in the FEDERAL REGISTER on August 19, 1954 (19 F. R. 5270).

A notice of extension of time for filing exceptions was filed by the Deputy Administrator, Agricultural Marketing Service on September 14, 1954, and published in the **FEDERAL REGISTER** of September 17, 1954 (19 F. R. 6009).

Ruling on exceptions. Within the period reserved therefor, exceptions were filed to certain of the findings, conclusions and actions recommended by the Deputy Administrator. In arriving at the findings, conclusions and regulatory provisions of this decision, such exceptions were carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings, conclusions and actions decided upon herein are at variance with any of the exceptions, such exceptions are overruled.

The material issues of record related to:

(1) Whether the handling of milk in the market is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk or its products;

(2) Whether marketing conditions justify the issuance of a marketing agreement or order;

(3) Extent of the marketing area;

(4) The scope of regulation;

(5) The classification of milk;

(6) Class prices;

(7) Payments to producers;

(8) Administrative provisions.

Findings and conclusions. Upon the evidence adduced at the hearing and the record thereof it is hereby found and concluded that:

(1) *Character of commerce.* The handling of milk in the Akron, Ohio marketing area is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk and milk products.

The record shows that handlers in this area from time to time receive milk from out-of-state sources.

Although Akron producers supply milk primarily for fluid use, there is necessarily some reserve for variations in sales and production, and accordingly, some of the milk goes into manufactured products, and as such competes with similar products available and received from out-of-state sources. Much of the cottage cheese for the Akron market originates in Detroit, Michigan. The record shows also that Akron handlers have received supplies of supplementary milk from plants which manufacture dairy products which move in or burden interstate commerce. Milk and milk products were also sold by an Akron handler to the Akron Naval Air Station and some of such milk was used outside the State of Ohio.

Record evidence also shows that milk processed in the proposed marketing area is sold in the Cleveland and Stark County marketing areas, where the handling of milk is regulated under other orders of the Secretary. The production areas of the proposed marketing area overlap the production areas of the Cleveland and Stark County markets, and producers shift or are shifted between the Akron market and these other markets. The Cleveland milkshed includes plants in Indiana and Michigan. Milk from the Stark County marketing area is sold in the proposed Akron marketing area.

(2) *Marketing conditions in relation to purposes of regulation.* The issuance of an order to regulate the handling of milk in the proposed Akron, Ohio marketing area will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act.

During periods prior to World War II and thereafter a pooling arrangement was operated in this market by some of the handlers and the principal producers' association. This pool equalized returns to producers of participating handlers on the basis of utilization. When the pooling operation was resumed after the war, in September 1948, seven handlers participated and five others remained outside the pool. Among the difficulties which caused the dissolution of the pool was failure of a handler to report receipts from other sources and sales to vendors. A representative of the association indicated that attempts have been made to reestablish the pool, but these efforts have been unsuccessful because not all handlers are willing to be in it.

The association complained that lack of a pooling arrangement has caused an uneven distribution of the effect of surplus in the market, with a preponderant part of responsibility for marketing the surplus falling upon the association. At the time of the hearing in February the association was disposing of a large volume of such milk to a cheese plant.

Until December, 1953, this milk was utilized in the market for fluid purposes. It was displaced as result of a change in business arrangements by one of the handlers and prospects are that it will be needed for fluid purposes during any subsequent season of low production. At the cheese factory, the milk brings only a manufacturing rate of return. The difference between the manufacturing price and the going market price of milk for fluid use is being borne only by the membership of the association with the result that member prices are reduced relative to nonmember prices.

Incomplete information on receipts and sales, such as caused the dissolution of the pool, has become a factor hindering producers in the development of an orderly method of marketing their milk since cessation of the pooling operation. There is a lack of a reliable and accurate system of accounting for milk receipts and utilization. Some handlers buying milk from the Akron Milk Producers, Inc., report summary data on utilization to the association. Since such reports do not give the detail or product disposition, they do not provide a basis for checking the handlers' accounting. Since reports are not made by all handlers, there is no assurance that producers for the market receive payment for the use value of their milk.

Following dissolution of the pool, the bargaining position of producers has deteriorated, inasmuch as lack of a pooling operation has put more of the burden of surplus on the association. Absence of pooling places a handler at a disadvantage if he carries a greater proportion of milk as a reserve than his competitors, and accordingly, each handler is reluctant to receive any more milk than a very minimum to meet his needs. Refusal by some handlers to have dealings with the association also prevents effective

bargaining and development of an orderly system for marketing producer milk.

Payment to producers is on a flat price basis. This is a single price applied to all milk received, regardless of use. In times when supplies are greater than sales in fluid form handlers are sometimes unwilling to accept all of the milk offered for sale by producers because the handlers are not willing to pay the same price for additional quantities of milk which must go into manufacturing uses. This situation results in dropping of some producers during the flush period, or turning milk back to the association.

Although handlers are reported to be paying about the same price to producers as the uniform prices in neighboring markets which have Federal regulation of producer prices, this does not indicate Akron handlers are paying for milk on a comparable basis with these other markets. Data in the record indicate the percentage of utilization in fluid use is generally higher for Akron handlers than in the Cleveland market. On this basis, the Akron handler would have a lower cost of milk than the Cleveland handler if he paid only the Cleveland uniform price. However, the record discloses two important exceptions to the "rule" that the Akron blend is as high as the blend in adjacent Federal order areas. One exception is that Akron prices were below the blend prices which prevailed under the Stark County order in the last few months of 1953. The second exception is the low price received by producers for the milk diverted to a cheese factory in the months immediately preceding the hearing. A fully effective classified price plan would assure producers of the full value of their milk in accordance with its use by handlers, as well as complete information on receipts, utilization, and prices.

A system of check-testing has been established by the Akron Milk Producers Association, but this has been effective only with respect to cooperating handlers. The association is not able to obtain corrections where check tests indicate variation from a handler's reported test. The program in the market for checking weights is not applicable to all handlers in the market.

A marketing agreement and order program is needed to establish and maintain desirable and orderly marketing conditions in the Akron, Ohio Marketing Area. An order will establish uniformity among the handlers on classification and pricing of milk; provide impartial audit and check-weighting and testing; equalize payments among producers; and provide marketwide information on receipts, sales and other aspects of the milk marketing problem.

(3) *Marketing area.* The marketing area in which the handling of milk would be regulated by the proposed order includes all the territory within the boundaries of Summit County, Ohio, and within the boundaries of Franklin, Ravenna, Brimfield and Suffield Townships in Portage County, Ohio, except those portions of the defined area in those two counties which are already included in the Stark County, Ohio, marketing area, namely sections 25, 26, 27, 34, 35, and 36 in Greene Township of Summit County, and lots 1, 2, 9, 10, 11, 12, 19, 20, 21, 22,

29, 30, 31, 32, 39, and 40 in Suffield Township in Portage County.

The area described is one served almost entirely by handlers with plants in Akron, Barberton, Ravenna, and Cuyahoga Falls. Other milk distribution within this area may include about 10 percent of the retail distribution of a handler at Orrville, and includes only minor parts of operations of other distributors. Distribution routes from the plants at Ravenna and Cuyahoga Falls are intermingled with routes out of plants in Akron and Barberton.

Health and sanitation requirements for the above described area are generally similar so uniform prices may be applied to all milk produced for the area. Milk received at handlers' plants moves freely to any part of the described area. The various handlers compete freely with each other throughout the area, purchasing and distributing milk which is relatively uniform in quality.

It is clear that the entire area described above is affected by similar marketing conditions. Findings and conclusions with respect to need for a more orderly marketing system apply generally to all parts of the area, and all parts of the area are so interrelated as to require regulation of all of the area if effective regulation is to apply in any part.

The only territory proposed in the notice of hearing which is not included in the defined marketing area (or already included in the Stark County, Ohio, Marketing Area) consists of Sharon and Wadsworth Townships in Medina County. Medina County has no formal health inspection requirements for milk. It follows that local dairies doing business solely in the two townships in Medina County would not be required to purchase from producers and distribute milk of comparable standards to those enforced in Summit and Portage Counties, and consequently equal pricing would not be economically feasible. If, on the other hand, any of the handlers who distribute milk in Medina County also distribute a significant quantity of milk in the marketing area, they will necessarily have met the inspection requirements and will be fully regulated by the order.

A handler also urged extension of the marketing area into parts of Portage and Medina Counties not covered in the notice of hearing. It is not possible to make any conclusion on this record as to areas not covered by the notice of hearing. Also, the Secretary, in a determination issued April 14, 1954 (19 F.R. 2233) found that there was no need to reopen the record of the hearing to consider such extension of the marketing area.

It is concluded that the above described area is a practical unit for the proposed regulation and should be adopted as the marketing area.

(4) *Scope of regulation—(a) Milk to be priced.* The type of regulation effected by a milk order is essentially a matter of establishing minimum prices to dairy farmers who produce milk for the market. The scope of such regulation may be made specific by providing appropriate definitions of the terms "producer", "handler", and "pool plant".

The primary factor in determining which dairy farmers are producers for

the market is the plant to which they deliver their milk. Marketing conditions described in the record indicate that the most practical method of order regulation would be to establish minimum prices to all farmers delivering milk to plants from which milk is regularly distributed in the marketing area.

Handlers selling milk in the proposed Akron marketing area receive their milk from dairy farmers at the plants where it is packaged for fluid distribution. Virtually all the plant operators who distribute any milk in the area have the preponderant part of their distribution in the defined marketing area, however the record does contain mention of a plant operator who appears to have only a marginal portion of his total sales in the defined area. The order should, therefore, stipulate a level of within-the-area operations for determining whether this plant or others which may currently or subsequently distribute milk in the marketing area are to be fully regulated.

It was proposed by producers at the hearing that plants distributing 10 percent of the Class I milk on routes wholly or partly in the marketing area should be pool plants. This definition of a pool plant contemplated the establishment of a marketwide equalization pool, which it is concluded elsewhere in this decision should be adopted. The figure of 10 percent might be regarded as being large enough part of the handler's business to indicate substantial association with the market and that the handler's operations are likely to affect general marketing conditions. A handler witness suggested that a lower percentage figure might be used. This method of defining a pool plant, however, does not measure the impact on the market of unregulated milk, since a 10 percent distribution from a large plant might represent considerably more significant competition than a 20 percent distribution from a small plant. Instead, it is concluded that all plants from which distribution of Class I products is made in this area should be included in the pooling operation, excepting only those with less than 300 "points" of Class I disposition daily on routes extending into the area. (A "point" is one quart of milk or a half pint of cream).

The limit of 300 "points" per day, or 600 "points" on every-other-day delivery is designed to represent a normal sized retail route or small to medium combination retail and wholesale route. Such volume is not considered a significant factor in this market and it is, therefore, not necessary that such a handler be subject to the entire reporting and payment provisions of the order.

Accordingly, "pool plant" should be defined as a plant at which milk received from dairy farmers is packaged for distribution as Class I milk and from which milk is distributed as Class I milk on a route(s) wholly or partially within the marketing area, except plants exempted because they have distribution of less than 300 "points" on such routes.

The term "route" is used in the definition of pool plant to cover a number of types of distributing operations in which handlers may engage in the proposed marketing area. "Route" should be defined as a sale or delivery (including a sale from a plant or a store) of Class I

milk to a wholesale or retail stop(s). Such definition would include as route distribution a sale to or through a vendor.

The term "producer" should be defined to mean any person, other than a producer-handler, who produces milk which has the approval of the health authorities of any community in the marketing area for consumption as fluid milk in such community and is received at a pool plant. The definition should include a producer whose milk is temporarily diverted to a nonpool plant by the handler for his account. Such a provision will serve to maintain the status of producer for a dairy farmer whose milk temporarily is not needed by the handler and would facilitate interplant movements of milk for the purpose of adjusting to short-term variations in supply and requirements. In order that milk which is diverted would continue to be included in the regular pool computations, it would be treated as if it were received at a pool plant.

There are sanitation requirements applied by local governments within the area with respect to approval of the farms from which milk for fluid consumption may be supplied, and accordingly, such a qualification should be a part of the producer definition. The order provisions would be uneconomic if they had the result that dairy farmers who have met the health standards for the market shared the returns on fluid sales with farmers who have not met such qualifications.

"Handler" should be defined as any person (1) in his capacity as the operator of a plant where milk is processed and packaged for distribution on a route(s) in the marketing area, and (2) any cooperative association with respect to the milk of any producer which such cooperative association causes to be diverted from producers' farms to a nonpool plant for the account of such cooperative association.

The handler is the person who receives milk from producers and who is responsible for reporting receipts and utilization of milk and payment therefor, with certain exceptions noted below. A cooperative association which markets the milk of its producer members may for short periods of time need to divert producers' milk from pool plants to nonpool plants. If the association is defined as a handler for such milk, even though it has no plant, the producers whose milk is so diverted will continue to receive the uniform price under the order and their milk will be available for fluid use when needed in the fall months or at other times.

The term "producer-handler" would apply to a person who produces milk and operates a plant from which a route(s) is operated wholly or partly in the marketing area, but receives no milk from producers. The order is not intended to establish minimum prices for such operators, but they should be required to make reports to the market administrator, since such reports are necessary to make a determination as to whether the operator is a producer-handler, and such reports facilitate accounting with respect to transfers of milk from other handlers.

A further exception from the minimum price regulation is the handler whose plant is a nonpool plant because his dis-

tribution in the area is less than 300 points. Such handlers should also be required to report for reasons similar to those for producer handlers.

(b) *Provisions relating to "other source milk".* The attached order provides (§ 960.5) for the designation of "pool" plants. The purpose of this designation is to indicate the sources of milk which are fully regulated under the order. Sections 960.46, 960.47, and 960.72 (b) provide for the integration into the regulatory plan of milk other than that which is fully regulated (i. e. "other source" milk). The former sections provide for the allocation, in the classification system, of other source milk while the latter section provides for certain payments to be made into the producer-settlement fund on other source milk which is in excess of that allocated to Class II milk and is obtained from plants not subject to the payment and pricing provisions of any other Federal order.

Any milk sold in the marketing area must, of course, conform to the sanitary requirements imposed by the local health authorities. However, handlers may meet these requirements without becoming regular and dependable sources of supply for the market since their milk may have been obtained as a supplemental supply during temporary periods of emergency or their sales may be extremely small in proportion to a primary distribution in some other area. Clearly, it is not possible to identify the regular and normal supply for the Akron area solely on the basis of sanitation requirements.

Neither is the shipment of milk to the marketing area for Class I utilization a practical basis for identifying the milk which should be fully regulated under the order. If any small, incidental, or accidental shipment of milk into the marketing area were to bring all of the milk at the plant from whence such shipment was made under total regulation, great hardship could be caused to the operator of such plant and to the farmers delivering milk to such an operator. Small quantities of milk are, in fact, disposed of in the regulated marketing area as Class I from plants which are not normal or regular sources of supply for the marketing area, particularly in the Fall season, when supplies are seasonally lowest. Moreover, the operators of the plants from which such shipments arise may not wish to bring their plants under total regulation. There are many situations in which plant operators may find it economical or desirable to make shipments of small quantities of milk to the marketing area and with respect to which it is neither necessary nor desirable in terms of effective regulation to bring the operators of such plants fully under the regulation. For instance, a plant which is associated with a market outside of the Akron area may find it advantageous to ship milk to a plant regulated by the order in order to have such milk converted into manufactured dairy products. It is quite possible, however, through misunderstanding, or from errors of estimating the utilization of milk, for milk which was intended for utilization in Class II products to be assigned a Class I classification. If through such accident or misunderstanding a plant were placed completely under regulation, considerable hardship, unnece-

sary to effective regulation, might result. For this reason, it is not practical nor desirable to place a plant totally under regulation merely because a small quantity of milk shipped by it to the market finds its way into a Class I utilization.

The attached order provides for a marketwide pool. Under this pooling plan, handlers whose proportion of utilization in Class I is greater than the market as a whole make payments into an equalization fund and those handlers whose proportion of utilization in Class I is less than the average for the market receive payments out of the equalization fund. This method of payments into and out of the equalization fund is the essential mechanism for providing uniformity of payments to farmers irrespective of the handler to whom they deliver their milk and provision for equalized payments to farmers is necessary to the maintenance of stable and orderly marketing conditions in the Akron area.

Because handlers with less than the market average proportion of milk in Class I may draw payments out of the producer-settlement, or equalization fund, there is an advantage to any plant operator who has less than the marketwide average proportion of milk in Class I to place himself under regulation in order to obtain these payments and, thereby, make it possible for him to pay the uniform price established under the order to his producers. The smaller the plant operator's proportion in Class I, the greater is the advantage of regulation to him. Under these circumstances, plants which are engaged primarily in the manufacture of milk into dairy products rather than as suppliers of Class I milk to the marketing area, will attempt to place their plants under regulation for the sole purpose of obtaining payments out of the equalization fund. The result of this, however, will be to reduce the returns to those farmers whose milk actually constitutes the regular source of supply of Class I milk for the marketing area.

It is necessary for the reasons stated, therefore, that that milk which in fact constitutes the regular and normal sources of supply for the marketing area be distinguished from other milk which might enter the marketing area. The pool plant definition of the order is designed to identify the regular and normal sources of supply for the Akron marketing area. This section provides that regulated pool plants are those from which a significant quantity of milk (300 points or more per day) is disposed of in the marketing area as Class I. Any plant, no matter where located, may bring itself under regulation by performing in the manner required, and any plant may relieve itself of regulation when it no longer operates in a way that brings it within the scope of the order. Under these circumstances, the decision as to whether a plant will be fully regulated under the order or will not be subject to regulation is determined by the decision of the plant operator himself.

Since the order provides for the identification of that milk which is subject to total regulation under the order, the possibility remains that some milk (i. e. other source milk) will be disposed of in the marketing area as Class I which is not subject to total regulation. In fact it was testified that some quantities of

other source milk have been disposed of in each month as Class I milk in the marketing area either by delivery to a plant which would be a pool plant under the order, or by sale by the outside plant operator directly to stores or to other consumption outlets such as hotels, restaurants, or homes.

The attached order provides that whenever total receipts from producers are more than 110 percent of the total Class I sales from pool plants a payment shall be made into the equalization fund on all milk which is not priced under this or another Federal order and which is classified as Class I at a rate equal to the difference between the Class I price and the Class II price. Payments at this rate are necessary to maintain the integrity of the pricing and pooling provisions of the order.

It appears from the record that essentially all of the other source milk utilized for Class I purposes in the marketing area has been of Grade A quality and, therefore, similar in quality to that regularly disposed of in the marketing area for Class I. It was produced as part of a supply intended primarily to meet the demand for milk for fluid consumption (or the equivalent of Class I milk uses under the order) in some area other than the area specified to be regulated by this order but it was not used for such purposes in the area for which it was produced. It was, instead, milk which became surplus to the needs for milk for fluid disposition in the area for which it was produced. If the plant operator had not found a sale for such milk within the Akron marketing area, it would have been necessary for him to convert the milk into a manufactured milk product. The most likely surplus disposition of this other source milk would have been to plants engaged in processing milk into such manufactured dairy products as butter, cheese, ice cream, or nonfat dry milk solids.

Its value, therefore, to the operator of the unregulated plant was a surplus milk value. The Class II price for milk under the attached order is based on the value of milk when it is converted into butter and nonfat dry milk solids or the prices paid for milk at a group of midwestern condenseries, and this is the price which regulated handlers are required to pay for milk when they convert it into manufactured products. The Class II price, therefore, represents an accurate and fair representation of the value to the receiving plant operator of surplus milk which is disposed of as other source milk for Class I purposes in the marketing area.

If unregulated plant operators were allowed to dispose of surplus milk for Class I purposes in the regulated marketing area without some compensating, or neutralizing, provision in the order, it is clear that the disposition of such milk, because of its price advantage relative to fully regulated milk, would displace the fully regulated milk in Class I uses in the marketing area. The plan of Congress, as contemplated under the Agricultural Marketing Agreement Act of 1937, of returning minimum uniform prices to the producers for the regulated marketing area, would be defeated. Moreover, inefficiencies in the marketing of milk would be encouraged, for the reg-

ulated market would obtain its Class I milk not from the regular and normal sources of supply for the market but from other sources of supply generated solely as a result of the price advantage created for unregulated milk by the regulation itself. Providing for some method of compensating for, or neutralizing the effect of, the advantage created for unregulated milk therefore is an essential and necessary provision of this order. Since the value for Class I milk in a regulated market is established at the level of the Class I price provided for in the order and since the true value of other source milk when disposed of in the marketing area is the Class II value, a payment computed as the difference between the Class I price and the Class II price will remove the advantage which other source milk would have when disposed of for Class I purposes in the marketing area.

A possible alternative method of determining the rate of the compensatory payments was mentioned at the hearing. Such rate would be equal to the difference between the Class I price and the price actually paid by a handler for other source milk of Grade A quality. Under the circumstances which prevail in the Akron marketing area, a handler normally would come into possession of this type of other source milk by purchasing it from an unregulated milk plant. The milk which such a handler receives under these circumstances is at a different stage in the marketing process than is the milk which would be priced under an order. Order prices apply to milk as received at the first plant from individual farmers. The price paid by a handler for other source milk applies to milk which has already been received at the first plant, weighed, tested, cooled and placed in a transportation conveyance. Obviously, the handler generally will pay more for other source milk under this condition than he would for milk received directly from farmers, for the plant operator who first receives the milk from farmers must necessarily obtain a markup if he is to be recompensed for the services which he has performed on the milk. In some situations, the purchase of other source milk might be made from a plant operated by the same company as the regulated plant. Thus, the transaction would be primarily a matter of book-keeping within the same company and it would be advantageous to the company if the price for the milk were to be stated as the Class I price. For by this means, all compensatory payments into the equalization fund would be avoided. Even between plants controlled by different companies, the advantage of showing that the price at which the milk was exchanged was at least as high as the Class I price would give great impetus to the effectuation of paper transactions showing a price at least equal to the Class I price while undisclosed payments were made in order to avoid the imposition of the compensatory payments into the equalization fund. Under these circumstances, it is impractical from an administrative standpoint to provide for a payment the actual amount of which is within the control of parties to the transaction. It is essential instead that the payment be computed on an objective basis and that it be equal for all handlers

for similar transactions. The proposed method of computing the payments conforms with these requirements but this alternative method fails to do so.

Another possible rate of payment would be based on the difference between the price paid by the first receiver to farmers and the Class I price. It is apparent, however, that this method would be impractical also. The payment plans which are used by unregulated operators include such varying practices as paying uniform prices on a straight utilization basis, paying on a base and excess plan, paying irregular and nonuniform premiums, absorbing transportation charges, and paying on a variety of butterfat and location differentials. This wide variety of payment plans would render impossible an accurate ascertainment of the actual prices paid to farmers by the first receiver. But what is equally as important, as shown above, is that the price actually paid to farmers does not determine the true value of other source milk disposed of in the marketing area. The true value for such milk, irrespective of the price paid for it to farmers, is the Class II value because other source milk disposed of in a marketing area is in fact the surplus of milk produced primarily for sale in an area outside of the regulated marketing area. Hence, although other suggestions for computing the rate of the compensatory charge have administrative and other difficulties inherent in them, in the final analysis even if they were administratively feasible, they would not be fully effective in removing the advantage which attaches to other source milk when it is used as Class I milk in the regulated marketing area. Only the differential between the Class I price and the Class II price accurately reflects this advantage and consequently only this rate will be fully effective in dealing with the problem of integrating other source milk (when used as Class I) into the regulatory plan.

Producers proposed that pool plants purchasing supplemental other source milk be exempted from compensatory payments whenever they could show to the satisfaction of the market administrator that producer milk was not available either directly or from other handlers, at the Class I price.

There is obvious merit to the proposal that compensatory payments not apply whenever the market as a whole is short of producer milk. At times when total supplies have been short in the Akron area, it was testified that supplies available from other areas have also been so limited and that in such periods other source milk commonly costs more than the local supplies.

However, there are several advantages to measuring the adequacy of supply by comparing total receipts from producers with the total Class I utilization of pool plant handlers, instead of on a definition of "availability". In Akron there appears to be some allocation of milk between these handlers who purchase their milk from the cooperative association. Among these handlers farm pick-up routes could be diverted at the Class I price without involving inter-handler transfer costs. However, other

handlers who have built up their own sources of supply and equipped their plants to utilize any seasonal surpluses might be reluctant to exchange milk.

These problems can be avoided by establishing a ratio of producer receipts to Class I sales from pool plants which will, in effect, measure availability but on a thoroughly objective basis. There are no data for the entire market, but it appears from the records furnished by those handlers who report to the association and from general testimony that the market can be considered short of producer milk whenever receipts are less than 110 percent of gross Class I sales. These partial data indicate that compensatory payments would not have applied on other source milk purchased by handlers during January, September, October, November, or December, 1953 because producer milk was less than 110 percent of Class I use in those months.

The percentage standard is similar to the availability proposal in that it is based on marketwide data. No handler can obtain other source milk without an equalizing payment merely by buying short from his own producers. He must either take on sufficient supplies for his own use or depend upon other handlers who have supplies in excess of their own Class I needs.

If it should develop that surplus milk from other areas is made available to Akron even at times of short supply, a reconsideration of the non-application of compensatory payments would be in order.

No compensatory payments should be required on milk classified and priced under another Federal order. The close relationships between the Cleveland, Akron, and Stark County markets have already been described and a modification of the proposed allocation provision has also been described. Since the Class I prices in Akron and Stark County have been specifically aligned with those under the Cleveland order there is no prospect of handlers in any one of the three markets achieving a competitive advantage.

All funds collected from other source milk should be added to the producer-settlement fund. Since the compensation payments apply only when there are adequate supplies of producer milk in the market, the payments will compensate producers for the loss of income represented by the Class I sales of other source milk.

The regulated handler should be obligated to make the compensatory payments. There will be no difference in actual price paid for milk whether the payment is made by the regulated handler or by the operator of the unregulated plant from which the other source milk is obtained. However, the regulated handler makes the actual distribution of milk and reports its utilization to the market administrator, therefore from an administrative viewpoint he is the logical one to make the payment.

(5) *Classification of milk.* All milk and milk products received by a handler

should be classified on the basis of the form in which or the purpose for which it is used as either Class I milk or Class II milk. Since skim milk and butterfat are not used in the same proportions in most products as they appear in milk or milk products received by a handler, skim milk and butterfat should be classified separately according to their separate uses. For milk products received or disposed of by a handler which cannot be accurately tested for skim milk and butterfat content and for condensed products from which water has been removed, the amount of skim milk and butterfat which was actually used to produce such products (or, if such information is not available, standard factors of skim milk and butterfat used to produce such products) should be employed to determine the receipts or disposition of skim milk and butterfat in such products.

(a) *Classes.* Class I utilization should be all skim milk (including the skim milk equivalent of concentrated products) and butterfat (1) disposed of for consumption in fluid form as milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk for fluid consumption not in hermetically sealed cans, cream, including sour cream or any mixture of cream and milk or skim milk, or (2) not accounted for as Class II utilization.

All of the enumerated forms of fluid milk are required by the Akron health department, and by the other health authorities having jurisdiction in the defined marketing area, to be made from milk produced on farms having permits for fluid use. The plants at which such milk is received from producers, processed, and bottled, must also meet prescribed standards, and be covered by permits. The sanitary standards applicable to the farms and plants are substantially equal throughout the area and the prices applicable to Class I milk sold anywhere in the area should, therefore, be equal.

Concentrated milk has not yet been distributed in the marketing area, but it has been distributed in certain Ohio cities. Proper classification of this product at this time will prevent any problems concerning its classification if at some future date a handler decides to start distributing it. Concentrated milk must be made from milk of similar quality to milk used in other products for fluid consumption which would be classified in Class I. Products commonly known as evaporated milk or condensed milk and which are either packed in hermetically sealed cans or are used in the manufacture of other milk products should not be considered as concentrated milk and should not be classified in Class I unless they are used in the manufacture of milk products which are in Class I.

It is an increasingly common practice to raise the nonfat solids content of skim milk, buttermilk, and flavored milk drinks. Apparently this is most commonly accomplished in the Akron area through the addition of condensed skim milk made from producer milk or milk

from other health-approved sources. The skim milk equivalent of these concentrated fluid items, whether obtained by adding solids or by partial condensation, should be in Class I.

All milk, skim milk, and cream which is received and for which the handler cannot establish utilization should be classified as Class I milk except for allowable shrinkage in Class II. Any other classification of such milk, skim milk, or cream could result in (1) some advantage to handlers who fail to keep adequate records of utilization, (2) lack of equality among handlers in the prices they pay for milk for the same use, and (3) failure of producers to receive full value of their milk on the basis of its use. A handler can avoid classification on this basis by maintaining complete records of utilization.

All skim milk and butterfat used to produce products other than the enumerated forms of Class I fluid milk should be Class II. The more common Class II dairy products manufactured by Akron handlers include cottage cheese, eggnog, yoghurt, aerated cream, ice cream and other frozen desserts or mixes, butter, cheese, condensed milk, and nonfat dry milk solids.

Some of the cream obtained from producer milk during the flush months is frozen and used during the short months, primarily in ice cream. Such cream should be accounted for as Class II when frozen and stored. If any of it is subsequently used for Class I purposes, it will be subject to reclassification at that time.

Route returns and other milk disposed of for livestock feeding should be Class II, provided that verifiable evidence of such disposal is available. Also, any skim milk which may need to be dumped should be in Class II. However, this can be verified only by witnessing the action, since no independently verifiable record is available for audit purpose. Accordingly, the handler is required to give advance notice to the market administrator in order that he can have opportunity to have the dumping witnessed.

Shrinkage at a plant should be determined by subtracting from the total receipts of skim milk and butterfat at such plant the total disposition of skim milk and butterfat, respectively, from such plant. If the receipts at the plant include both producer milk and other source milk, the total shrinkage should be prorated between producer milk and other source milk. None of the shrinkage should be assigned to milk received from another pool plant because the shrinkage on such milk should be allowed to the handler operating such other pool plant. Shrinkage on milk diverted from farms to a pool plant other than the plant to which such milk is usually delivered should be allowed at the plant at which it is actually first received. No shrinkage should be allowed on milk diverted from a pool plant to a nonpool plant.

A plant which is operated in a reasonably efficient manner and for which complete and accurate records of re-

ceipts and utilization are maintained should have a total shrinkage of well under two percent of its total receipts. It is concluded that any shrinkage assigned to producer milk which is not more than two percent of total receipts of producer milk should be classified as Class II milk, and any shrinkage which is in excess of two percent of such receipts should be classified as Class I milk. All shrinkage assigned to other source milk should be classified as Class II milk.

(b) *Transfers.* Provision is made for classification of milk transferred between pool plants and between pool plants and non-pool plants. In the case of transfers between pool plants, transfer is permitted in any agreed class in which the transferee plant has utilization in an amount equal to or greater than the amount so transferred, after allocating any other source milk, since under a marketwide pool the classification of milk transferred between pool plants may represent any agreed producer milk use without affecting the payment to producers. Both handlers are required to report the transferred milk in the agreed classification; otherwise milk and cream transfers are classified as Class I.

In the case of transfers from a pool plant to a non-pool plant, a requirement that producer milk be allocated to the higher value uses in the transferee plant might make it difficult for pool plant operators to dispose of surplus milk. It is concluded that transfers from a pool plant to a non-pool plant in the form of milk, skim milk or cream should be in Class I, but that such transfers may be classified as Class II if so reported by the pool plan operator and if the transferee or another plant to which the product may be moved by the transferee has an equivalent use in Class II and keeps books and records which make it possible for the market administrator to verify such use.

(c) *Allocation.* Since some handlers combine operations which utilize other source milk in the same plants as those which handle producer milk for the fluid market, it is necessary to provide a method for allocating such other source milk to the classes of utilization in order to determine the classification of the producer milk. Since producer milk is the milk which is regularly available for fluid consumption in the marketing area, the method of allocation provides that producer milk shall be allocated to Class I to the extent that such use is available.

Handlers proposed that if during any month receipts of milk from producers are less than 120 percent of the total volume of Class I milk during such month, then other source milk should be allocated to Class I and Class II milk in the same ratio as receipts from producers. Such allocation procedure should not be adopted. The possibility exists that handlers may be able to obtain other source milk for use in Class I at a price below the Class I price. In view of this possibility, the allocation procedure proposed by handlers allocates other source milk to Class I while some producer milk is being allocated to Class

II. This would offer an incentive to handlers to maintain only nominal supplies of producer milk and to rely on supplemental supplies of other source milk.

At the hearing it was pointed out by the proponents that their original proposal for the allocation of milk from other Federal areas as other source receipts under the Akron order would create serious problems. The original proposal provided that all other source milk (whether from unregulated or other Federal sources) be allocated first to any Class II utilization by each Akron handler. This provision would have had no effect on these handlers who distribute milk in Akron from plants subject to the Cleveland or other Federal order, since they have no producers under the Akron order. Also it would not affect an Akron handler in a position similar to that of another dairy which was having its entire supply of milk bottled by a firm subject to the Stark County order. The proposal would, however, have affected those handlers who supply part of their sales with milk from local producers and part with milk bottled in two-quart containers at the Stark County plant. In this case the seasonal and daily excess of producer milk under the Akron order, which would otherwise be assigned to Class II use, would be allocated instead to Class I to the extent of the receipts of the other Federal order milk. Clearly, the seasonal and daily reserves of milk necessary to supply the exact quantities of two-quart milk bottled at the Stark County plant was carried by Stark County producers. Yet under the original proposal, the producers at the Akron plant would get Class I credit for milk which should properly be considered as reserve supply for the quantities of milk actually bottled at the Akron plant for fluid distribution.

In addition to these recognized inadequacies, it was brought out at the hearing that other types of intermarket movements of milk are growing rapidly. The most notable current instance is the direct distribution of milk by one of the Akron handlers in the Cleveland and Stark County marketing areas. However, Cleveland handlers also distribute milk in the Akron area, and firms with plants in each of two or more areas have already consolidated their manufacturing operations or removed them entirely from their regulated plants, and other consolidations might conceivably occur which would affect intermarket classification and pricing.

A suggested solution advanced by the Akron producers would apply only to such cases as that of the Akron handler who gets a portion of his milk from a Stark County handler. It was suggested that a portion of the Class I milk bottled by the Stark County handler for the Akron distributors be credited to the Akron producers. This suggestion is based upon the premise that the Akron handler formerly obtained all of his milk locally and that the change in his operations deprives Akron producers of part of their Class I sales.

It must be recognized, however, that all types of changes in the location of handlers' plants and in their areas of distribution may involve changes in their procurement of milk. Such changes have not been controlled within any of the Federally regulated marketing areas and should not be subject to allocation between such closely interrelated areas as Cleveland, Akron and Stark County.

It is concluded that milk in bottled form classified and priced under another Federal order should be assigned to the same utilization under the Akron order as under the other order, as well as being exempt from the price provisions of the Akron order.

Bulk milk may be purchased from other Federal areas to supplement an Akron handler's local supplies. Such milk will be classified and priced under the other Federal order, but the classification thereunder may depend upon how it is allocated under the Akron order. On milk obtained from a Cleveland pool plant, for example, the classification under the Akron order would determine the classification under the Cleveland order. However, milk obtained from a Chicago pool plant would automatically be Class I under the Chicago order, regardless of its Akron classification, because it had been moved outside the "surplus milk manufacturing area" as defined in the Chicago order. The Akron order should give the local producers priority on Class I sales over the milk from other Federal sources. The attached order provides that other source milk from unregulated plants be first assigned to any Class II utilization of the Akron handler. Then any other source milk obtained from plants regulated under another Federal order is assigned to any remaining Class II utilization. Such allocation will encourage handlers to purchase other source milk only when producer milk is not available. At such times, of course, there would be little or no producer milk in Class II to be affected by allocation.

If the total of all Class I and Class II milk in producer milk so computed exceeds the amount of producer milk reported to have been received at the plant for which the computation is being made, such excess (commonly referred to as "overrun") should be assigned first to any Class II utilization remaining after the foregoing allocation, and any remainder to Class I. Any overrun at a pool plant should be paid for by the handler operating the plant at the price for the class to which such overrun was allocated. Payment for such overrun could be a result of underweighing or undertesting producers' milk or of failing to maintain complete and accurate records of the receipts and utilization of producer milk.

(6) *Class prices.* The Class I products are those in which the fluid milk producers are primarily interested. It is this Class of products which requires extra effort and expense to meet the strict sanitation requirements, provide a year-around supply, and undertake the extra hauling which is commonly in-

volved. Handlers must be charged a sufficiently high price for the milk used in Class I to attract an adequate supply of milk for the market. The seasonal and daily excess of Class II milk, on the other hand, must either be disposed of to manufacturing plants or manufactured into products made from milk which can be produced under less stringent conditions.

(a) *Class I price.* For the first 24 months of the operation of an order for the Akron area, the minimum Class I price per hundredweight of milk of 3.5 percent butterfat content should be 5 cents less than that prevailing under Order No. 75 regulating the handling of milk in the Cleveland, Ohio, marketing area for milk delivered to plants located in the marketing area.

Some time after the order has been in operation a full year, a hearing can be called to consider more permanent Class I price provisions. At such time considerable marketwide data on all aspects of the problem will have become available, and variations in the price-making method which might then seem to provide a more satisfactory price for the Akron marketing area may be given thorough consideration.

There are several reasons for adopting the Cleveland Class I price of milk, less 5 cents, as being the most appropriate price available for the first several months of operation of the Akron order. One is that the supply of milk for Akron is obtained from farms located comparatively close to the market. The milk is hauled directly from the farms to the bottling plants from which it is distributed in the marketing area; none of the bottling plants obtain regular supplies from country supply plants. In order to maintain this supply of milk, the prices paid farmers must be closely in line with those paid to Cleveland shippers, since the Cleveland milkshed completely envelope the Akron territory. The prices must also be in line with those established under the Stark County order, since Akron and Stark County producers are intermingled in the area south of Akron.

If the procurement of milk was the only price problem involved, the class prices under the Akron order could be established at such levels as to result in blend prices relative to those paid under the Cleveland and Stark County orders which would discourage the Akron shippers from shifting to the other markets. In the absence of any order price regulation, the smaller secondary markets like Akron which are located within the milkshed of a large primary market like Cleveland tend to obtain their supplies from the closest farms. The handlers in the large primary market, either individually or in aggregate, tend to bypass the secondary markets and develop country plant sources of supplies in more distant areas from which the milk is hauled in tank load lots. This practice by the secondary markets of obtaining their comparatively small supplies lo-

cally, while the primary market relies upon country plant sources from which tank load shipments are feasible, should not be hindered by the order.

However, the procurement of the supply of milk is not the only aspect of intermarket competition which must be considered in establishing the Class I price in Akron. Sales competition between Akron handlers and those regulated under the Cleveland and Stark County orders is exceptionally keen. Some phases of the competition have already been described under the topic "Marketing Area". The one milk company has extensive sales in the Cleveland and Stark County areas from its plant at Stow, Ohio. This company also is a major handler in the Akron territory, which is supplied from this firm's large plant at Cuyahoga Falls. There are substantial sales by several Cleveland handlers in the Akron marketing area and direct competition exists between Cleveland and Akron handlers in the territory between the two marketing areas. Relations between Stark County and Akron handlers are even more direct; one of the Stark County handlers bottles the entire supply of milk for one Akron area handler and bottles milk in 2-quart paper containers for three other handlers whose principal distribution is in the Akron area. The Cleveland handlers whose plants are located in that city must, of course, pay at least the f. o. b. market Class I price for all milk distributed from such plants. However, Cleveland handlers whose plants are located not more than 60 miles from the Cleveland city hall must also pay the f. o. b. prices for all milk distributed from such plant for Class I purposes even though the minimum price to producers in the 30-60 mile zone is 13 cents less than the market price. The Stow, Ohio, plant of the Lawson Milk Company and the Wooster Farm Dairy, at Wooster, are within the 60-mile zone. Sales by Stark County handlers and the milk bottled for Akron distributors by a Stark County handler are paid for at the Stark County Class I price. The Class I price for milk received at plants holding health permits from Canton, Alliance, or Massillon is 5 cents less than the Cleveland Class I price for milk delivered to city plants.

The Class I price under the Cleveland order is determined by adding a Class I differential to the value of manufactured milk. The value of manufactured milk is the higher of two basic formula prices, one being the average price reported paid to farmers by a list of midwest condenseries, and the other being a formula which measured the value of milk used for manufacturing butter and nonfat dry milk solids. The Class I differential is 90 cents per hundredweight during April, May and June, the months of flush production; \$1.90 during August through January, the months of lowest production; and \$1.45 during the intermediate months of February, March and July. These stated Class I differentials are further subject to a supply-demand adjustment which raises the Class I differential whenever supplies are below normal in relation to sales, and lowers it whenever supplies are excessive in re-

lation to sales. The supply-demand adjustment is limited to plus or minus 25 cents. It is concluded that this same system of pricing is as appropriate to the conditions of supply and demand of milk in Akron as in Cleveland, and that the two markets are so closely competitive both in the procurement and distribution of milk approximately the same Class I price should prevail in both markets.

Adopting a Class I price which is the same as that under the Stark County order, and only 5 cents below that of the Cleveland order would assure substantial equality between the cost of Class I milk to all handlers in the three markets. This similarity of prices would prevent the substantial changes in sales territories, location of plants, and procurement policies which would be virtually certain to result if there were any substantial differences in the Class I prices in these markets. It appears probable that this similarity of Class I prices will result in a higher blend price to the Akron producers than is paid under the Cleveland order. The data reported by those handlers who purchase milk from the cooperative associations indicate a substantially higher percentage of Class I utilization than occurs under the Cleveland order. Although data were not available for the other Akron handlers, experience in other markets where there is no marketwide pool indicates that their utilization may also be comparatively high. If such a difference in blend prices materializes, Cleveland shippers may wish to switch to the Akron market. However, even if such switch occurs, it will have only minor affect upon Cleveland supplies, since a shift by a comparatively small proportion would equalize the Akron and Cleveland blend prices.

The conclusion that the Akron Class I price be 5 cents below the Cleveland price instead of fully equal to it reflects the discount on fluid cream contained in the Cleveland order. In the Akron order the butterfat and skim milk content of fluid cream is in Class I, at the same price as the components of fluid milk and other Class I items. Under the Cleveland order the prices of the butterfat and skim milk components of fluid cream are determined by deducting 45 cents per hundredweight from the price of fluid milk of 3.5 percent butterfat content and allocating 70 percent of the resultant price as the value of the 3.5 pounds of fat and 30 percent as the value of the 96.5 pounds of skim milk. At the prices which prevailed during the calendar year 1953 the quantities of fluid cream sold under the Cleveland order reduced the total Class I price 5.5 cents per hundredweight of milk below the price which would have prevailed if there had been no discount on fluid cream. This computation is based upon the announcements of minimum Class prices to handlers and minimum blend prices payable to producers, as issued by the Cleveland market administrator. Official notice of such data is hereby taken. In order to assure equality in the level of the Class I prices paid by Akron handlers with those under the Cleveland and Stark County orders, the Akron Class I price should be 5 cents

less than the Cleveland Class I price applicable to fluid milk.

(b) *Class II price.* The Class II price should be equal to the average paid for milk of 3.5 percent butterfat content at 15 midwest condenseries or a formula based on market prices of butter and nonfat dry milk solids, whichever is higher.

The butter-powder formula should be the same as that used for the pricing of Class II milk under the Stark County order and as a basic formula under both the Stark County and Cleveland orders. This formula uses the market prices of butter and powder to measure the value of milk used for their manufacture. Three cents is deducted from the price of 92-score butter at Chicago, the result is multiplied by an overrun factor of 1.2, and this result in turn is multiplied by the basic fat test (3.5) as a measure of the value of the butterfat content. To this butterfat value is added the skim milk value computed by deducting 5.5 cents from the average of the market prices for spray and roller process nonfat dry milk solids, f. o. b. cars or trucks at manufacturing plants in the Chicago area, and multiplying the result by a yield factor of 8.2, the quantity of solids obtainable from 96.5 pounds of skim milk.

Data on the quantities of Class II milk were not made available for all of the Akron area distributors at the hearing. However, a compilation submitted by the producers shows the percentage of producer milk used in each of three categories as reported by the six firms which purchased milk from the association in 1953. These data disclosed that in the calendar year 1953 only 11 percent of milk received from the producers was utilized for purposes other than fluid milk and cream. No milk was reported so used in the months of October and November, and the maximum percentage in excess of fluid needs occurred in May when the percentage reached 25. These data demonstrated that a remarkably high percentage of milk received from producers at these plants is utilized for fluid milk and cream.

It was testified that several handlers have equipped their plants to manufacture cottage cheese and ice cream as a means of making the most efficient and profitable use of the seasonal excess of milk delivered by producers. Two of the larger handlers have minimized the handling of flush season receipts by developing health-inspected sources of milk which were drawn upon only during the fall and winter season of low production. Such measures as these have greatly reduced the necessity of physically transporting much of the seasonally excess milk from the bottling plants to manufacturing plants. Even in those instances when supplies from producers are in excess of those which can be accommodated in the handlers' plants, it is frequently possible to divert the milk from farm pickup routes directly to manufacturing plants, thereby avoiding the extra expense of receiving such milk at the bottling plants and transporting it back to a manufacturing outlet.

It is difficult to place a precise valuation on the excess milk. Its value is comparatively low on such quantities as must be received at bottling plants and transported considerable distances for manufacture; on the other hand its value is comparatively high in terms of the alternative cost for milk suitable for use in the manufacture of cottage cheese or ice cream delivered to Akron handlers' plants from other sources. When the excess of supplies of producer milk can be utilized in handlers' plants, it should command an appreciable premium over the basic formula prices which refer to strictly manufacturing grade milk. Such premium reflects the higher quality of producer milk and the absence of transportation or container costs.

It is concluded that the Class II price will permit the orderly and efficient disposal of milk not needed for fluid use without encouraging handlers to add producers in excess of those needed to supply their needs for fluid milk and cream in the months of lowest production.

(c) *Handler butterfat differentials.* The Class I and Class II prices under the order should be stated in terms of the price per hundredweight of milk containing 3.5 percent of butterfat. The price applicable to milk of a butterfat content other than 3.5 percent should be stated in terms of a butterfat differential, i. e., the amount by which the price at basic test is raised or lowered for each one tenth of one percent that the test differs from 3.5 percent. The Class I butterfat differential should be 0.13 times the price per pound of 92 score butter at Chicago, and the Class II butterfat differential should be 0.115 times the butter price.

The butterfat and skim milk utilized in each class is accounted for separately under most of the Federal orders, including all those in Ohio. The price per hundredweight of milk must, of course, be allocated to the skim milk and butterfat components. In most orders throughout the United States this is accomplished by specifying a basic butterfat test and a butterfat differential, which is the amount to be added or subtracted from the announced price for each one tenth of one percent variation in butterfat content. However, under the Cleveland, Stark County, and Lima orders the 3.5 percent price is only an intermediate computation; official class prices are then computed and announced separately per hundredweight of butterfat and per hundredweight of skim milk. There is no substantive difference between the two methods of computing and announcing class prices. The butterfat price differential is more simply stated, focuses attention on the 3.5 price, and is used in the great majority of orders which utilize a butterfat and skim milk accounting system. It should, therefore, be used in Akron.

In the original Notice of Hearing, it was proposed by producers that the Class I price for 3.5 milk be allocated to butterfat and skim milk in the same ratio as the basic butter-powder formula, which is the price comprised of the values of

butterfat and skim milk in milk used for manufacturing purposes. At the hearing they modified this proposal to provide that the value of a hundred pounds of Class I butterfat be set at a fixed ratio of 130 times the price per pound of 92 score butter at Chicago and that skim milk be assigned the residual value obtained by deducting the value of 3.5 pounds of butterfat from the 3.5 price per hundredweight of Class I milk. The modification would reduce the value of Class I butterfat and keep it at a fixed relationship to butter in all months of the year. Skim milk values, of course, would be correspondingly increased. The modification reflects an increasing consumer demand for skim milk and skimmed or partly skimmed milk drinks, and a decreasing consumer demand for cream and other high-butterfat products.

Producers proposed that the Class II price be allocated to butterfat and skim milk in the same ratio as contained in the basic formula butter-powder price. In the basic formula butterfat is valued at the price per pound of 92-score butter in Chicago less 3 cents, multiplied by an overrun factor of 120. If the local plant price is above the Class II butter-powder formula price, the Class II butterfat value will be correspondingly higher. On balance, it appears that a Class II butterfat differential equal to 0.115 times the market price of butter will achieve substantially the same allocation between butterfat and skim milk as was proposed.

(7) *Payments to producers—(a) Type of pool.* It is concluded that the sales proceeds from all pool plants should be combined on a market-wide basis for distribution to the producers.

A market-wide form of pooling was proposed by producers and was not opposed by any of the handlers. The alternative is a system of individual-handler pooling whereby the producers supplying each of the regulated handlers is paid a blend price based upon the proportionate Class I and Class II sales of that particular handler. For many years the cooperative association of producers in the Akron market sold the milk of its members to handlers under a classified price plan, and distributed the proceeds through a market-wide pool. Under such a pool all producers received the same minimum price for milk at 3.5 percent butterfat content delivered to pool plants. (This uniform price is, of course, subject to adjustment for varying percentages of butterfat content and producers may also be charged different rates for hauling this milk from farm to plant.) An important advantage of a market-wide pool is that the uniformity of payments to producers allows handlers either to equip their plants to manufacture the seasonal and daily surpluses of milk, or to minimize their handling of such milk, without affecting the blend price paid to the particular shippers who deliver regularly to their plants. Some of the Akron handlers are equipped to utilize seasonally surplus milk from their own producers and from other handlers in the market, while some handlers have

virtually no facilities in their plants for the manufacture of dairy products. One further reason for preferring a market-wide pool in Akron to individual-handler pooling is that both the Cleveland and Stark County orders provide for market-wide pools. Having a similar pool in Akron will facilitate shifts of producers in response to changes in local demands and patterns of distribution or other factors which may affect one market more than the others. This follows from the fact that individual handlers can add shippers without appreciably lowering the prices payable to their own producers, thereby jeopardizing the returns to their previous regular shippers.

(b) *Payments to individual producers and to members of cooperative associations.* Handlers should make payments to each producer for milk delivered by such producer at the appropriate uniform price. Payments due any producer for milk should be paid by the handler to a cooperative association if the cooperative association makes a written request for such payments and if the producer has given the cooperative association written authorization, in the form of a contract or in any other form, to collect such payments. The association's request should also agree to indemnify the handler for any loss incurred because of an improper claim. In making such payments for producer milk to a cooperative association the handler should at the same time furnish the cooperative association with a statement showing the name of each producer for whom payment is being made to the cooperative association, the volume and average butterfat content of milk delivered by each such producer, and the amount of and reasons for any deductions which the handler withheld from the amount payable to each producer. This statement is necessary so the cooperative association can make proper distribution of the money it collects to producers for whom it collects.

Unless a cooperative association can receive payment for the milk marketed on behalf of its producer members, it cannot re-blend the sales proceeds from milk sold in various outlets. Such re-blending may be desirable in connection with profits or losses on milk diverted by an association to nonpool plants or on milk sold for fluid use in other marketing areas.

(c) *Producer-settlement fund.* Since all producers are to receive the same price for milk (except for butterfat differentials), and since the amount which the order requires a particular handler to pay for his milk may be more or less than the amount he is required to pay to producers or cooperative associations, some method of balancing these amounts is necessary. A producer-settlement fund should be established for this purpose. All handlers who are required to pay more for their milk on the basis of their utilization than they are required to pay to producers or cooperative associations should pay the difference into the producer-settlement fund; and all handlers who are required to pay more to producers or cooperative associations than they are required to pay for their

milk on the basis of utilization should receive the difference from the producer-settlement fund. Amounts paid into and out of the producer-settlement fund for this purpose will be equal, except for minor differences that may result from rounding off uniform prices. In order to permit this rounding off of prices, to allow for unavoidable delays in receiving payments from handlers, and to permit payments to be made to any handler which audit by the market administrator reveals is due such handler from the producer-settlement fund, a reserve should be held in the producer-settlement fund at all times. The amount of the reserve contemplated in the proposed order should be sufficient for these purposes. This reserve would be adjusted each month.

If at any time the balance in the producer-settlement fund is insufficient to cover payments due to all handlers from the producer-settlement fund, payments to such handlers should be reduced uniformly per hundredweight of milk. The handlers may then reduce payments to producers by an equivalent amount per hundredweight. Amounts remaining due such handlers from the producer-settlement fund should be paid as soon as the balance in the fund is sufficient, and handlers should then complete payments to producers. In order to reduce the possibility of this occurring, milk received by any handler who has not made payments required of him into the producer-settlement fund should be eliminated in the computation of the uniform price in subsequent months until such handler has completed all delinquent payments.

(d) *Producer butterfat differential.* The uniform prices should be computed for milk containing 3.5 percent of butterfat. This follows past market practice. In distributing proceeds to producers a differential should be established for milk containing more or less than 3.5 percent of butterfat.

Such differential should correspond to the weighted average values of the butterfat and skim milk in producer milk utilized by handlers in Class I and Class II. This follows the same principle as the payment of a uniform price to all producers. Each producer shares equally in the total value of the handlers' Class I and Class II utilization, at the basic test of 3.5 percent butterfat. It is equally appropriate that each should receive the average utilization value of the butterfat and skim milk components for milk testing above or below 3.5 percent. A weighted average will give butterfat a somewhat higher value and skim milk a proportionately lower value than those proposed by producers; the Class I butterfat differential is 1.3 times the butter price and the Class II factor is 1.15 whereas producers proposed a differential just fractionally over the butter price without allowing for a yield factor.

(e) *Administrative provisions.* The remaining provisions of the order are of a general administrative nature, are incidental to the other provisions of the order, and are necessary for the proper and efficient administration of the order. They provide for the selection of a mar-

ket administrator, define his powers and duties, provide for an administrative assessment, prescribe the information to be reported by handlers and set forth the rules to be followed in making the computations required by the order. They also prescribe the length of time that records must be retained and provide a plan for the liquidation of the order in the event of its suspension or termination. They are similar to like provisions of other orders, and except as set forth below require no comment.

(a) *Expenses of administration.* As his share of the expenses of administering this order each handler should pay not in excess of 3 cents per hundredweight with respect to all producer milk received, and all other source milk received at a pool plant which was classified at Class I milk. The market administrator must verify receipts and utilization of all such milk; therefore all such milk should be subject to the expenses of administration. Experience in other markets indicates that 3 cents per hundredweight with respect to all such milk should yield sufficient money to cover expenses of administration. If payment of expenses of administration at the rate of 3 cents per hundredweight yields more money than is needed, provision is made for the Secretary to prescribe a lesser rate of payment from time to time.

(b) *Marketing services.* It was pointed out earlier in this decision that market-wide information concerning market supply and requirements would be useful to producers and cooperative associations in helping them maintain their production in line with market requirements. Costs involved in distributing information to producers and cooperative associations should be borne by the producers or their associations.

The cooperative association in the market has been providing marketing services to its members which include the verification of weights and tests of milk delivered by each member. The provision for such services to be rendered to producers for whom a cooperative association does not perform such services will assure each producer that he is receiving his just proportion of the total proceeds of the market. Costs of these services should also be borne by producers.

On the basis of the costs of providing these services in other markets, it is concluded that a deduction of 6 cents per hundredweight of milk delivered by each producer should be adequate to cover these costs. Provision is made that the Secretary may reduce this deduction if experience indicates a lesser deduction will provide adequate funds. If a cooperative association is actually performing these services for producers, then in lieu of the 6 cent deduction such deduction as is authorized by such producers should be made from the amounts due producers for whom the cooperative association is performing such services and should be paid to the cooperative association.

(c) *Records and reports.* Reports are required from handlers on receipts and utilization so that the market adminis-

trator may make the computations necessary to the marketwide pooling operation and compute the uniform price to producers. Handlers would also be required to submit payroll reports which would show the details of milk receipts from each producer, the value of the milk received from the producer, deductions therefrom, and net amount paid to the producer.

The order should provide limitations on the period of time handlers shall retain books and records which are required to be made available to the market administrator, and on the period of time in which obligations under the order shall terminate. The provision made in this regard is identical in principle with the general amendment made to all orders in operation on July 30, 1947, effective February 22, 1949, and the Secretary's decision of January 26, 1949 (14 F. R. 444), covering the retention of records and limitation of claims is equally applicable in this situation and is adopted as a part of the decision.

(d) *Time schedule.* Dates must be prescribed for announcing prices, filing reports and making payments. The following time schedules should allow all interested persons adequate time to perform each function. (These time limits apply to the indicated day of the month following the month for which computations are being made.)

Day of the Month and Function

- 5th—Announcement of class prices by market administrator.
8th—Submission of monthly report of receipts and utilization by handlers.
13th—Announcement of uniform price and names of handlers who received producer milk and notification to handlers of the value of their producer milk by market administrator.
14th—Payment by handlers of amounts due to producer-settlement fund and for expenses of administration.
16th—Payments by handlers to cooperative associations and by market administrator out of producer-settlement fund.
18th—Payments by handlers to producers.

(f) *Milk subject to other Federal orders.* A handler who operates a plant at which minimum prices to dairy farmers are established under another order issued pursuant to the act, but nevertheless supplies milk for distribution in the Akron marketing area should be exempt from the provisions of this order, except for reporting his volume of Class I sales in the marketing area. It would be impracticable to attempt to regulate a handler under two separate orders with respect to the same milk. The effective regulation should be subject to determination by the Secretary of Agriculture. A proposal that the Class I sales by such a handler in the Akron marketing area be prorated between Akron producers and the producers for the other market is discussed elsewhere in this decision.

General findings. (a) The proposed marketing agreement and the order and all of terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the

act are not reasonable in view of the price of feeds, the available supply of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Determination of representative period. The month of September 1954 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of an order to regulate the handling of milk in the Akron, Ohio, marketing area in the manner set forth in the attached order is approved or favored by producers, who during such period, were engaged in the production of milk for sale in the marketing area specified in such marketing order.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively "Marketing Agreement Regulating the Handling of Milk in the Akron, Ohio, Marketing Area," and "Order Regulating the Handling of Milk in the Akron, Ohio, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

It is hereby ordered. That all of this decision, except the attached marketing agreement, be published in the **FEDERAL REGISTER**. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

This decision filed at Washington, D. C., this 17th day of November, 1954.

[SEAL] **EARL L. BUTZ,**
Assistant Secretary of Agriculture.

Order¹ Regulating the Handling of Milk in the Akron, Ohio, Marketing Area

Sec. 960.0 Findings and determinations.

DEFINITIONS

- 960.1 Act.
- 960.2 Secretary.
- 960.3 Marketing area.
- 960.4 Handler.

¹This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

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§ 960.0 Findings and determinations—(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Akron, Ohio, marketing area. Upon the basis

of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk produced for sale in the said marketing area as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expenses of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3 cents per hundredweight or such amount not exceeding 3 cents per hundredweight as the Secretary may prescribe, with respect to all receipts within the month of milk from producers and other source milk which is classified as Class I milk and which is not subject to administrative assessment under another Federal order.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Akron, Ohio, marketing area shall be in conformity to and in compliance with the following terms and conditions as set forth below:

DEFINITIONS

§ 960.1 Act. "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C., 601 et seq.).

§ 960.2 Secretary. "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers and to perform the duties of the said Secretary of Agriculture.

§ 960.3 Marketing Area. The Akron, Ohio, Marketing Area, hereinafter referred to as "marketing area" means all territory, including but not limited to all municipal corporations within the boundaries of: Summit County excepting sections 25, 26, 27, 34, 35, and 36 in Greene Township; and including Franklin, Ravenna, Brimfield, and Suffield Townships in Portage County (excepting lots 1, 2, 9, 10, 11, 12, 19, 20, 21, 22, 29, 30, 31, 32, 39, and 40 in Suffield Township).

§ 960.4 Handler. "Handler" means any person (a) in his capacity as the operator of a plant where milk is processed and packaged for distribution on a route(s) in the marketing area, and (b) any cooperative association with respect to the milk of any producer which such cooperative association causes to be diverted from producers' farms to a plant for the account of such cooperative association.

§ 960.5 Pool plant. "Pool plant" means any plant at which milk received from dairy farmers is packaged and distributed as Class I milk on a route(s) wholly or partially within the marketing area, except plants exempted pursuant to § 960.80.

§ 960.6 Nonpool plant. "Nonpool plant" means a plant other than a plant operated by a producer-handler, during such months as it is not a pool plant.

§ 960.7 Producer. "Producer" means any person other than a producer-handler who produces milk which has approval of the health authorities of any community in the marketing area for consumption as fluid milk in such community and is received at a pool plant. This definition shall include any such person who is regularly designated as a producer but whose milk is caused to be diverted to a plant, other than a pool plant, by a handler for his account. Milk so diverted shall be deemed to have been received at a pool plant by the handler or cooperative association which caused it to be diverted.

§ 960.8 Producer milk. "Producer milk" means skim milk and butterfat contained in milk received from producers.

§ 960.9 Other source milk. "Other source milk" means all skim milk and butterfat contained in milk, skim milk, or cream, used to produce all other milk products, received from all sources other than producers and pool plants.

§ 960.10 Producer-handler. "Producer-handler" means any person who (a) produces milk; (b) receives no milk from producers or from other sources; and (c) operates a plant from which a route(s) is operated wholly or partially within the marketing area.

§ 960.11 Route. "Route" means a sale or delivery (including a sale from a plant or store) of Class I milk to a wholesale or retail stop(s).

§ 960.12 Person. "Person" means any individual, partnership, corporation, association, or any other business unit.

§ 960.13 Department of Agriculture. "Department of Agriculture" means the United States Department of Agriculture.

§ 960.14 Cooperative association. "Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association; (a) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; (b) to have full authority in the sale of milk of its members and to be engaged in making collective

sales or marketing milk or its products for its members; and (c) to have all of its activities under the control of its members.

MARKET ADMINISTRATOR

§ 960.20 Designation. The agency for the administration of this subpart shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 960.21 Powers. The market administrator shall have the power to:

(a) Administer all of the terms and provisions of this subpart;

(b) Make rules and regulations to effectuate the terms and provisions of this subpart;

(c) Receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) Recommend to the Secretary amendments to this subpart.

§ 960.22 Duties. The market administrator shall perform all duties necessary to administer the terms and provisions of this subpart, including but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties as market administrator and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions of this subpart;

(c) Obtain a bond in reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 960.75, (1) the costs of his bond and of the bonds of those of his employees who handle funds entrusted to the market administrator, (2) his own compensation, and (3) all other expenses (except those incurred under § 960.76) necessarily incurred by him in the maintenance and functioning of his office in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this subpart and upon request by the Secretary surrender the same to his successor or to such other person as the Secretary may designate.

(f) Publicly announce unless otherwise directed by the Secretary by posting in a conspicuous place in his office and by such other means as he deems appropriate the name of any person who, within 8 days after the day upon which he is required to perform such acts, has not made reports pursuant to § 960.30 or § 960.31 or payments pursuant to §§ 960.70, 960.72, 960.74, 960.75, 960.76, or 960.77;

(g) Submit his books and records to examination and furnish such informa-

tion and verified reports as may be requested by the Secretary;

(h) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other person upon whose utilization the classification of skim milk and butterfat for such handler depends; and

(i) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate;

(1) On or before the 5th day of each month the minimum class prices for the preceding month for milk of 3.5 percent butterfat content, as computed pursuant to §§ 960.50 and 960.51, and the butterfat differentials, computed pursuant to § 960.52.

(2) On or before the 13th day of each month the uniform price for the preceding month, computed pursuant to § 960.61, and the butterfat differential for the preceding month computed pursuant to § 960.74.

(j) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such information concerning the operation of this subpart as does not reveal confidential information.

REPORTS, RECORDS AND FACILITIES

§ 960.30 Monthly reports of receipts and utilization. On or before the 8th day of each month, each handler who operates a pool plant, and any cooperative association with respect to milk for which it is a handler pursuant to § 960.4(b), shall, with respect to milk or milk products which were received or produced by such handler during such month, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(a) The quantities of butterfat and skim milk contained in milk received from producers, or produced by the handler;

(b) The quantities of butterfat and skim milk contained in or used to produce receipts of milk and milk products from other handlers;

(c) The quantities of butterfat and skim milk contained in or used to produce receipts of other source milk (except Class II products disposed of in the form in which received without further processing or packaging by the handler);

(d) The utilization of all butterfat and skim milk the receipt of which is required to be reported pursuant to this section;

(e) The pounds of butterfat and skim milk contained in all milk, skim milk, and cream and other Class I products on hand at the beginning and at the end of the month;

(f) Such other information with respect to the use of milk as the market administrator may request.

§ 960.31 Other reports. Other reports shall be submitted to the market administrator as follows:

(a) Each producer-handler, and each handler who does not operate a pool plant, shall make reports at such time and in such manner as the market administrator may request.

(b) On or before the 20th day of each month each handler who operated a pool plant at which producer milk was received in the preceding month shall submit such handler's producer payroll for the preceding month which shall show (1) the total pounds and the butterfat content of milk received from each producer, (2) the amount and date of payment to each producer or cooperative association pursuant to § 960.70, and (3) the nature and amount of each deduction or charge made by the handler.

§ 960.32 *Records and facilities.* Each handler and producer-handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of any of his operations and such facilities as in the opinion of the market administrator are necessary to verify or to establish the correct data with respect to: (a) The receipts and utilization or disposition of all skim milk and butterfat received, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat, skim milk and other contents of all milk and milk products handled; and (c) all payments required to be made by such handler pursuant to §§ 960.70, 960.72, 960.74, 960.75, 960.76, and 960.77.

§ 960.33 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handler or producer-handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if within such three-year period the market administrator notifies the handler or producer-handler in writing that the retention of such books and records or of specified books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice the handler or producer-handler shall retain such books and records or specified books and records until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler or producer-handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 960.40 *Skim milk and butterfat to be classified.* All skim milk and butterfat received at a pool plant from any source or diverted by a cooperative association shall be classified pursuant to §§ 960.41 through 960.44.

§ 960.41 *Classes of utilization.* Subject to the conditions set forth in §§ 960.43 and 960.44, the classes of utilization shall be:

(a) Class I utilization shall be all skim milk (including the skim milk equivalent of concentrated products) and butterfat (1) disposed of for consumption in fluid form as milk, skim milk, buttermilk, flavored milk; flavored milk drinks, concentrated milk not in hermetically sealed cans, cream, including sour cream or any

mixture of cream and milk or skim milk, or (2) not accounted for as Class II utilization.

(b) Class II utilization shall be all skim milk and butterfat (1) used to produce any product other than those specified in paragraph (a) of this section; (2) disposed of for livestock feed or skim milk dumped subject to prior notification to and inspection (at his discretion) by the market administrator; (3) in shrinkage of producer milk up to 2 percent of receipts from producers; or (4) in shrinkage of other source milk.

§ 960.42 *Shrinkage.* (a) If producer milk is utilized in conjunction with other source milk, the shrinkage shall be allocated pro rata between the receipts of skim milk and butterfat in producer milk and other source milk.

(b) Producer milk transferred or diverted by a handler from his pool plant to another pool plant without first having been received for purposes of weighing in the transferring or diverting handler's pool plant shall be included in the receipts at the pool plant to which such milk was transferred or diverted for the purpose of computing shrinkage and shall be excluded from the receipts at the transferring or diverting handler's pool plant for such purpose.

§ 960.43 *Responsibility of handlers and reclassification of milk.* All skim milk and butterfat contained in producer milk and in other source milk received by a handler shall be classified as Class I milk unless the handler proves to the market administrator that such skim milk and butterfat or a portion thereof should be classified as Class II milk. Any skim milk or butterfat which is classified in Class II shall be reclassified to Class I if subsequent to the original classification such skim milk or butterfat is handled in such a manner as to justify its reclassification.

§ 960.44 *Transfers.* (a) Skim milk and butterfat disposed of from a pool plant to another pool plant in the form of milk, skim milk or cream shall be Class I utilization unless Class II utilization is indicated by the operators of both plants in their reports submitted pursuant to § 960.30: *Provided*, That in no event shall the amount so classified as Class II be greater than the amount of producer milk used in such class in the pool plant of the transferee handler after allocating other source milk in such plant in series beginning with the lowest priced utilization.

(b) Skim milk and butterfat moved in the form of milk, skim milk or cream from a pool plant to a handler described in § 960.80 or to a nonpool plant shall be Class I utilization unless all of the following conditions are met:

(1) Class II utilization is indicated by the operator of the pool plant in his report submitted pursuant to § 960.30.

(2) The operator of the nonpool plant maintains books and records which are made available for examination upon request by the market administrator and which are adequate for the verification of such Class II utilization.

(3) If the above conditions are met, the market administrator shall classify

all skim milk and butterfat received at the nonpool plant and the skim milk and butterfat so transferred shall be allocated in series beginning with any skim milk and butterfat, respectively, remaining in Class I milk after allocating skim milk and butterfat in milk received from dairy farmers whom the market administrator determines constitute the regular source of milk for Class I uses at such plant, in series beginning with Class I milk.

(c) Skim milk and butterfat transferred in the form of milk, skim milk, or cream to a producer-handler shall be classified as Class I milk.

§ 960.45 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and for other obvious errors the report submitted by each handler pursuant to § 960.30 and shall compute separately the pounds of skim milk and butterfat in each class.

§ 960.46 *Allocation of butterfat.* The pounds of butterfat remaining after making the following computations shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class II utilization, the pounds of butterfat shrinkage allowed pursuant to § 960.41 (b) (3);

(b) Subtract from the total pounds of butterfat in each class, in series beginning with the lowest priced utilization, the pounds of butterfat in other source milk other than that received from a plant at which the handling of milk is fully subject to the pricing and payment provisions of another marketing agreement or order issued pursuant to the act;

(c) Subtract from the pounds of butterfat in each class, in series beginning with the lowest priced utilization, the pounds of butterfat in other source milk received in a form other than that specified in paragraph (d) of this section from a plant at which the handling of milk is fully subject to the pricing and payment provisions of another marketing agreement or order issued pursuant to the act;

(d) Subtract from the pounds of butterfat in each class the pounds of butterfat contained in milk or milk products received in packaged form which were classified and priced under another Federal order and disposed of in the same form as received;

(e) Subtract from the pounds of butterfat remaining in each class the pounds of butterfat received from other handlers in such classes pursuant to § 960.44 (a); and

(f) Add to the remaining pounds of butterfat in Class II utilization the pounds subtracted pursuant to paragraph (a) of this section.

(g) If the remaining pounds of butterfat in both classes exceed the pounds of butterfat in milk received from producers, subtract such excess from the remaining pounds of butterfat in each class in series, beginning with the lowest-priced utilization.

§ 960.47 *Allocation of skim milk.* Allocate the pounds of skim milk in each class to milk received from producers in

a manner similar to that prescribed for butterfat in § 960.46.

MINIMUM PRICES

§ 960.50 *Class I price.* During the two year period following the effective date of this subpart, the minimum price per hundredweight to be paid by each handler, f. o. b. his pool plant, for milk of 3.5 percent butterfat content received from producers or from cooperative associations during the month, which is classified as Class I utilization shall be 5 cents less than the Class I price as determined pursuant to § 975.61 (a) of this chapter, exclusive of the proviso contained therein, of the order, as amended, regulating the handling of milk in the Cleveland, Ohio, marketing area (Order No. 75, Part 975 of this chapter).

§ 960.51 *Class II price.* The minimum price per hundredweight to be paid by each handler, f. o. b. his pool plant, for milk of 3.5 percent butterfat content received from producers or from cooperative associations during the month, which is classified as Class II utilization shall be the higher of the prices computed by the market administrator pursuant to paragraphs (a) or (b) of this section.

(a) The average of the basic (or field) prices ascertained to have been paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department of Agriculture by the companies indicated below:

Present Operator and Location

Borden Co., Mount Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Berlin, Wis.
Carnation Co., Chilton, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Bellsville, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price computed by adding together the plus amounts pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the month, subtract 3 cents, add 20 percent of the resulting amount, and then multiply by 3.5.

(2) From the simple average, as computed by the market administrator, of the weighted averages of the carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding

month through the 25th day of the month for which prices are being computed by the Department of Agriculture, deduct 5.5 cents, and multiply by 8.2.

§ 960.52 *Handler butterfat differentials.* If the average butterfat content of the milk of any handler allocated to any class is more or less than 3.5 percent, there shall be added to the prices of milk for each class as computed pursuant to §§ 960.50 and 960.51 for each one-tenth of one percent that the average butterfat content of such milk is above 3.5 percent, or subtracted for one-tenth of one percent that such average butterfat content is below 3.5 percent, an amount equal to the average daily wholesale price per pound of Grade A (92 score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the month, multiplied by the following factors:

(a) *Class I milk.* Multiply by 1.3, and divide the result by 10.

(b) *Class II milk.* Multiply by 1.15, and divide the result by 10.

DETERMINATION OF UNIFORM PRICE

§ 960.60 *Value of producer milk for each handler.* The value of producer milk received or delivered during the month by each handler who operates a pool plant, and by any cooperative association with respect to milk for which it is a handler pursuant to § 960.4 (b), shall be a sum of money computed by the market administrator by multiplying by the applicable class price, adjusted pursuant to § 960.52, the total combined hundredweight of skim milk and butterfat received from producers allocated to each class pursuant to §§ 960.46 and 960.47, adding together the resulting amounts, and if such handler has a utilization greater than has been accounted for as received from all sources, add an amount computed by multiplying any such excess utilization classified pursuant to § 960.46 (f) and § 960.47 by the applicable class prices.

§ 960.61 *Computation of uniform price.* For each month the market administrator shall compute a uniform price per hundredweight of milk containing 3.5 percent of butterfat to be paid to producers delivering milk to any pool plant as follows:

(a) Combine into one total the value of producer milk for each handler as computed pursuant to § 960.60 for all handlers who reported pursuant to § 960.30 for such month, except those in default in payments required pursuant to § 960.72 for the preceding month.

(b) Add the total amount of all payments made pursuant to § 960.72 (b);

(c) Add any amounts paid into the producer-settlement fund and subtract any amounts paid out of the producer-settlement fund pursuant to § 960.77;

(d) Add an amount representing not less than one-half of the unobligated balance in the producer-settlement fund exclusive of the amounts added or subtracted pursuant to paragraphs (b) and (c) of this section;

(e) Subtract, if the weighted average butterfat test of all producer milk represented by the amounts included under

paragraph (a) of this section is greater than 3.5 percent, or add, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the difference of such weighted average butterfat test from 3.5 percent by the butterfat differential computed pursuant to § 960.74 multiplied by 10;

(f) Divide the resulting amount by the total hundredweight of producer milk received by all handlers during the month for which uniform prices are being computed;

(g) Subtract not less than 4 cents nor more than 5 cents, and the result shall be the uniform price to be paid per hundredweight of milk containing 3.5 percent of butterfat to producers who delivered milk during the month for which uniform prices are being computed.

§ 960.62 *Notification.* On or before the 13th day of each month the market administrator shall notify each handler who submitted a report for the preceding month pursuant to § 960.30 of:

(a) The classification pursuant to §§ 960.46 and 960.47 of skim milk and butterfat contained in producer milk received by such handler during the preceding month and the value of such milk computed pursuant to § 960.60;

(b) The uniform prices for the preceding month computed pursuant to § 960.61; and

(c) The amount due such handler pursuant to § 960.73 and the amount to be paid by such handler pursuant to §§ 960.72, 960.75, and 960.76.

PAYMENTS

§ 960.70 *Time and method of payment.* (a) Except as provided by paragraph (b) of this section, on or before the 18th day after the end of each delivery period, each handler (except a cooperative association) shall pay each producer for milk received from him within such delivery period, not less than an amount of money computed by multiplying the total pounds of such milk by the uniform price, adjusted by the butterfat differential pursuant to § 960.74, and less any proper deductions authorized by the producer: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 960.73 he may reduce such payments uniformly per hundredweight for all producers, by an amount not in excess of the per hundredweight reduction in payment from the market administrator; however, the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(b) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each han-

dler shall (i) pay to the cooperative association on or before the 16th day of each month, in lieu of payments pursuant to paragraph (a) of this section an amount equal to the gross sum due for all milk received from certified members, less amounts owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer and submit to the cooperative association written information which shows for each such member-producer (a) the total pounds of milk received from him during the preceding month, (b) the total pounds of butterfat contained in such milk, (c) the number of days on which milk was received, and (d) the amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler shall be made by written notice to the market administrator, and shall be subject to his determination.

§ 960.71 Producer-settlement fund. The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made pursuant to §§ 960.72 and 960.77 and out of which he shall make all payments pursuant to §§ 960.73 and 960.77.

§ 960.72 Payments to the producer-settlement fund. On or before the 14th day of each month handlers shall make payments to the market administrator as follows:

(a) If the value of producer milk received by a handler in the preceding month as computed pursuant to § 960.60 exceeds the amount which such handler is required to pay all producers pursuant to § 960.70, such handler shall pay the difference between the two amounts.

(b) If, during the preceding month, the total receipts from all producers was 110 percent or more of the total Class I utilization at pool plants, any handler who received other source milk during the preceding month which was allocated to Class I pursuant to § 960.46 (b) or § 960.47 shall pay an amount equal to the value of such milk at the Class I price less the value of such milk at the Class II price.

§ 960.73 Payments out of the producer-settlement fund. On or before the 16th day of each month, the market ad-

ministrator shall pay to each handler any amount by which the sum required to be paid by such handler for the preceding month pursuant to § 960.70 is greater than the total value of the milk of such handler computed pursuant to § 960.60 for such preceding month less any unpaid obligations of the handler to the market administrator pursuant to §§ 960.72, 960.75, 960.76 (a), and 960.77 (a). *Provided*, That if the balance in the producer-settlement fund is insufficient to make payments to all handlers pursuant to this paragraph, the market administrator shall reduce such payments by a uniform amount per hundredweight of milk and shall complete such payments as soon as the necessary funds become available.

§ 960.74 Producer butterfat differential. In making payments pursuant to § 960.70 the uniform prices shall be adjusted for each one-tenth of one percent of butterfat content in the milk of each producer above or below 3.5 percent, as the case may be, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of § 960.52, weighted by the pounds of butterfat in producer milk in each class and round the result to the nearest tenth of a cent.

§ 960.75 Expense of administration. (a) As his pro rata share of the expense incurred pursuant to § 960.22 (c), each handler shall pay the market administrator on or before the 16th day of each month 3 cents per hundredweight or such lesser amount as the Secretary may from time to time prescribe with respect to (a) all receipts within the preceding month of producer milk (including such handler's own production), and

(b) All other source milk allocated to Class I pursuant to § 960.46 (b) and the corresponding portion of § 960.47.

§ 960.76 Marketing services. In making payments to producers or cooperative associations pursuant to § 960.70 a handler shall make deductions and dispose of amounts so deducted as follows:

(a) Except as set forth in paragraph (b) of this section a handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, with respect to all producer milk for which payment is being made pursuant to § 960.70 and shall pay the total amount of such deductions to the market administrator on or before the 16th day after the end of the month in which such producer milk was received. Such amount shall be expended by the market administrator to verify weights and tests of milk of producers and to provide producers with market information, such service to be performed by the market administrator or by an agent engaged by and responsible to him.

(b) Each association of producers which is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, may file with a handler a claim for authorized deductions from the payments otherwise due to its producer members

for milk delivered to such handler. Such claim shall contain a list of the producers for which such deductions apply, an agreement to indemnify the handler for the amount of any loss sustained by him because of any improper claim on the part of the association, and a certification that the association has an unterminated membership contract with each producer, which contract authorizes the claim deduction. In making payments to producers for milk received during the month, each handler shall make deductions in accordance with the association's claim and shall pay the amount deducted within 16 days after the end of the month.

§ 960.77 Errors in payments. Whenever audit by the market administrator of any handler's reports, books, records or accounts discloses errors or whenever skim milk or butterfat is reclassified pursuant to § 960.43 resulting in monies due (a) the market administrator from such handler, or such handler from the market administrator or (b) any producer or cooperative association from such handler pursuant to § 960.70 the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice. In computing amounts due pursuant to this section the class prices, the appropriate uniform price, the butterfat differential, the rate of administrative assessment pursuant to § 960.75, and the rate of marketing service deduction pursuant to § 960.76 which were applicable in the month for which the original calculation of amounts due were made shall be used.

§ 960.78 Termination of obligation. (a) The obligation of any handler to pay money required to be paid under the terms of this subpart shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator received the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notified the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association the name of such producers or association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this subpart, to make available to the market administrator or his representatives all books or records required by this subpart to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of

this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this subpart to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this subpart shall terminate two years after the end of the calendar month during which milk involved in the claim was received if any underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within that applicable period of time, files pursuant to section 8c (15) (A) of the act, a petition claiming such money.

APPLICATION OF PROVISIONS

§ 960.80 *Handler exemption.* A handler who operates a plant located outside the marketing area from which an average of less than 300 points (one point being defined as one-half pint of cream or one quart of any other Class I product) of Class I milk per day is disposed of during the month on a route(s) operated wholly or partly within the marketing area, or a handler operating a plant which the Secretary finds is subject, during the month, to another Federal order shall be exempted with respect to the milk received at such plant during such month from all provisions of this subpart except §§ 960.31, 960.32, and 960.33.

§ 960.81 *Producer-handler.* A producer-handler shall be exempt from all provisions of this subpart except that he shall make reports to the market administrator at such time and in such manner as the market administrator may request.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 960.90 *Effective time.* The provisions of this subpart, or any amendment to this subpart, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated. The provisions of this section shall apply to any obligation under this subpart for the payment of money.

§ 960.91 *Suspension or termination.* Whenever the Secretary finds the subpart or any provision of this subpart obstructs or does not tend to effectuate the declared policy of the act, he shall terminate or suspend the operation of this order or any such provision of this subpart.

§ 960.92 *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this subpart there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 960.93 *Liquidation.* Upon the suspension of the provisions of the subpart, except this section, the market administrator, or such other liquidation agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and execute and deliver all assignments or other instrument necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all assets, books, and records of the market administrator shall be transferred promptly to such liquidation agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 960.100 *Agent.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this subpart.

§ 960.101 *Separability of provisions.* If any provision of this subpart, or its application to any person or circumstances, is held invalid the application of such provisions, and the remaining provisions of this subpart, to other persons or circumstances shall not be affected thereby.

Order of the Secretary Directing That a Referendum Be Conducted Among the Producers Supplying Milk to the Akron, Ohio, Marketing Area, and Designation of an Agent To Conduct Such Referendum

Pursuant to section 8c (19) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 608c (19)), it is hereby directed that a referendum be conducted among the producers (as defined in the proposed order regulating the handling of milk in the Akron, Ohio, marketing area) who, during the month of September 1954 were engaged in the production of milk for sale in the marketing area specified in the aforesaid order to determine whether such producers favor the issuance of the order which is a part of the decision of the Secretary of Agriculture filed simultaneously herewith.

The month of September 1954 is hereby determined to be the representative period for the conduct of such referendum.

A. T. Radigan is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177), such referendum to be completed on or before the 25th day from the date this referendum order is issued.

[F. R. Doc. 54-9215; Filed, Nov. 19, 1954; 8:52 a. m.]



